

REMARKS**Restriction Requirement**

The Examiner has made a requirement for restriction between the following groups of claims:

Group I: Claims 1-3, 5 and 7, drawn to a method of forming an antibiotic layer; and

Group II: Claims 4-7, drawn to a method of injection-molded a preform.

In order to comply with the Examiner's Restriction Requirement, Applicant provisionally elects to prosecute Group I, directed to claims 1-3, 5 and 7, for prosecution in the present application. Applicant reserves the right to file a Divisional application directed to the non-elected claims at a later date, if so desired.

Applicant respectfully submits that the Examiner has failed to comply with the special rules governing Restriction Requirements in national stage applications filed under 35 U.S.C. § 371, such as the present application. As the Examiner may appreciate, the rules governing restriction practice in national stage applications are different from the restriction practice rules applied to regular U.S. applications.

The Examiner states that the Group I and Group II inventions do not relate to a single inventive concept because they lack the same or corresponding special technical features. The Examiner cites PCT Rule 13.2 as supportive of this requirement for restriction.

Applicant respectfully submits that 37 C.F.R. 1.475(a), which essentially mirrors the language set forth in PCT Rule 13.2, states the following:

Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Applicant respectfully submits that the Group I and Group II inventions relate to a single inventive concept because they share the same or corresponding special technical features.

Independent claims 1 and 4 are provided below, with the common limitations therebetween shown in bold and italics:

1. *An antibiotic method for processing a part of a refrigerator using a silver-based antibiotic substance, comprising the steps of:*

forming a preform of the part to have a thickness relatively smaller than that of a finished product of the part through an extrusion process;

*mixing 0.05 to 0.1% by weight of the silver-based antibiotic substance in the form of pellets with a resin based on the total weight of the resin; and*

*forming an antibiotic layer on a surface of the preform of the part using the resin with the antibiotic substance mixed therewith.*

4. *An antibiotic method for processing a part of a refrigerator using a silver-based antibiotic substance, comprising the steps of:*

*mixing the silver-based antibiotic substance in the form of pellets with a resin; and*

*injection-molding a preform of a finish product of the part using the resin with the silver-based antibiotic substance mixed therewith.*

As can be readily ascertained, the method of independent claim 1 shares many of the same or corresponding special technical features with the method of independent claim 4. Accordingly, they are related, they share the same or corresponding special technical features, they relate to a single inventive concept, and therefore they are not properly restrictable.

The Examiner states that the inventions lack a special technical feature because allegedly the “technical feature of uniting the two is old in the art, as evidenced by Miira et al.” Regardless of whether an individual feature of the claims may be known in the art as alleged by the Examiner (although such is not admitted by Applicant), 37 C.F.R. 1.475(a) specifically states that special technical features mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. (emphasis added). Accordingly, it is improper for the Examiner to focus on one particular feature and support a restriction by stating that such feature is old in the art, instead of considering the claims as a whole.

Accordingly, Applicant respectfully submits that this national stage application satisfies the requirements of unity of invention, and therefore a restriction between the two groups is improper.

For the above recited reasons, Applicant respectfully requests that the requirement for restriction be reconsidered and withdrawn.

In order to comply with the Examiner's requirement, Applicant has provisionally elected one invention for prosecution in the event the requirement for restriction becomes final, thus preserving the right to petition the requirement for restriction, which petition may be deferred until after final action on or allowance of claims to the invention elected accordingly to 37 C.F.R. 1.144. However, Applicant believes that it will be unnecessary to petition the above requirement for restriction since it is believed that the requirement for restriction will be withdrawn based on the above remarks.

Accordingly, in view of the above remarks, reconsideration of the requirement for restriction and an action on all of the claims in the application are respectfully requested.

**Election of Species**

The Examiner has set forth an Election of Species Requirement as follows:

Species A - the antibiotic layer is formed by laminating a film made of the resin with the antibiotic substance mixed therewith; and

Species B - the antibiotic layer if formed on the surface of the part of the refrigerator through multi-extrusion.

In order to comply with the Examiner's Election of Species Requirement, Applicant provisionally elects Species B, readable on claims 1, 3, 5 and 7 for prosecution in the present application. According to the Examiner, claims 1 and 4-7 are generic. Applicant reserves the right to file a Divisional application directed to the non-elected claims at a later date, if so desired.

This requirement for election of species is respectfully traversed for the reasons set forth below.

As set forth in 37 C.F.R. § 1.146, a reasonable number of species are permitted in a single application. The present application contains two species, which should be considered to be a reasonable number of species. Otherwise, the rule would be "only one species is permitted per application." However, this appears to be the way that the Examiner is interpreting Rule 146, which is clearly contradictory to the express language of the rule. Further, examination of both species together in one application would not place an undue burden on the Examiner. It is respectfully submitted that the Examiner's Election of Species Requirement is improper in view

of the fact that a reasonable number of species are set forth in the present application, and such is permitted by Rule 146.

Accordingly, in view of the above remarks, reconsideration of the requirement for election of species, and an action on all of the claims in the application, are respectfully requested.

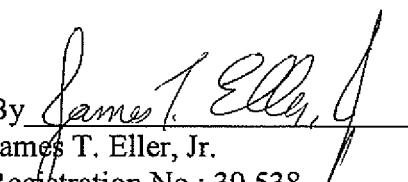
Favorable action on the present application is earnestly solicited.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: May 20, 2008

Respectfully submitted,

By   
James T. Eller, Jr.  
Registration No.: 39,538  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant